

REMARKS/ARGUMENTS

Favorable reconsideration of this application is requested in view of the above amendments and in light of the following remarks and discussion.

Claims 1-4 and 6-77 are pending in the application. Claim 78 was previously canceled without prejudice or disclaimer and Claim 5 is presently canceled without prejudice or disclaimer. Claims 1, 4, 10, 11, 20, 23, 28, 36-46, 49, 54, 62, 65, and 70 are amended without the introduction of any new matter.

In this last regard, independent Claim 1 has been amended to include the subject matter of canceled Claim 5 and subject matter removed from Claim 4 by the present amendment. Independent Claims 20, 36, 41, 46, and 62 have been amended to include subject matter from canceled Claim 5. With further regard to the specification support for these independent claim amendments, note, for example, the specification at page 122, line 22 to page 123, line 23 and at page 152, line 10 to page 153, line 8. The dependent claims have been amended to be consistent with the amendments to the independent claims.

The outstanding Action presents a rejection of Claims 1-77 as being unpatentable over Nakagawa et al. (U.S. Patent No. 5,835,911, Nakagawa) in view of Sakanishi ((U.S. Patent No. 6,678,888).

While the rejection of Claim 5 is technically moot in view of the cancellation of Claim 5, it remains relevant as to the rejection of independent Claims 1, 20, 36, 41, 46, and 62. In this regard, independent Claims 1, 20, 36, 41, 46, and 62 have been amended to emphasize that:

(a) the remote managing apparatus includes a schedule generating part that generates an update data and time for updating the second software; and a schedule transmitting part that transmits the generated update date and time to the intermediary apparatus; [subject matter from Claim 4 and only incorporated into independent Claim 1]

(b) the intermediary apparatus includes a transmission rate measuring part that measures a first transmission rate between the intermediary apparatus and the remote managing apparatus and a second transmission rate between the intermediary apparatus and the at least one of the electronic apparatuses; and a transmission rate reporting part that reports the first and second transmission rates to the remote managing apparatus; and [subject matter from Claim 5 incorporated into independent Claims 1, 20, 36, 41, 46, and 62]

(c) the schedule generating part of the managing apparatus generates the update data and time based on an amount of data of the first software stored in the first storage part and the first and second transmission rates received from the intermediary apparatus. [subject matter from Claim 5 incorporated into independent Claims 1, 20, 36, 41, 46, and 62]

Regarding the subject matter incorporated from Claim 5, the outstanding Action indicates the reasons for rejecting Claim 5 on page 8 to page 10. However, the outstanding Action offers no explanation of how Nakagawa can be said to teach the above-noted features (b) and (c) derived from the subject matter of canceled Claim 5. Instead of addressing these features (b) and (c), the outstanding Action only alleges that Nakagawa shows “a schedule generating part,” “a schedule transmitting part,” “a schedule writing part,” and “a transmission requesting part” as to the present invention. Thus, the outstanding Action is incomplete as it is silent as to the above-noted features (b) and (c) of Claim 5 that are now incorporated into independent Claims 1, 20, 35, 41, 46, and 62.

In addition, Nakagawa does not teach or suggest the above-described added feature (a) that has been incorporated into independent Claim 1 from Claim 4. For example, the outstanding Action asserts that “a schedule generating part” and “a schedule transmitting part” are shown at column 12, lines 20-35 of Nakagawa in the paragraph bridging pages 8 and 9 of the outstanding Action.

Referring to this portion of Nakagawa, it appears that the outstanding Action is relying on the object software 1a of the user computer 1-1 of Fig. 1 of Nakagawa as teaching the “second software stored by each of the electronic apparatuses” of the present invention. However, this portion of Nakagawa merely indicates that “the first process unit 1b is activated at a predetermined time” and “by the activation of the first process unit 1b at times predetermined by user’s software, the object software 1a can be automatically updated periodically every dawn, every week, or every month without user’s explicit operations.” Thus, Nakagawa does not teach or suggest that a predetermined time or times at which the first process unit 1b is activated are generated by “a schedule generating part” of “a remote managing apparatus,” with which outstanding Action seems to equate the vendor computer 3 (the second process unit 3a) of Nakagawa.

Therefore, the outstanding Action fails to properly ascertain the differences between the claimed invention and the prior art.

Further, according to the relevant embodiment of the present invention, the schedule information is generated based not only on the transmission rate between the intermediary apparatus and the remote managing apparatus but also based on the transmission rate between the intermediary apparatus and the electronic apparatus(es). Thus, the transmission time between the intermediary apparatus and the remote managing apparatus is checked as is the state of the electronic apparatus (image-forming apparatus) as to congestion (busy) indirectly from the transmission rate between the intermediary apparatus and the electronic apparatus. As a result, “By thus automatically generating the schedule information, workload on a center operator can be reduced.” (See, for example, page 122, line 22 to page 123, line 23 of the specification.) The outstanding Action fails to consider this unexpected result (objective evidence) produced by the claimed invention as a whole.

As shown above, the outstanding Action fails to follow Examination Guidelines for Determining Obviousness under 35 U.S.C. §103 as set forth in MPEP §2141. Thus, the outstanding Action has failed to establish a *prima facie* case of obviousness. For at least these reasons, the 103(a) rejection of independent Claims 1, 20, 36, 41, 46 and 62 combination of Nakagawa and Sakanishi should be withdrawn.

Claims 2-4 and 6-19 that depend directly or indirectly on Claim 1, Claims 21-35 that depend directly or indirectly on Claim 36, Claims 42-45 that depend directly or indirectly on Claim 41, Claims 47-61 that depend directly or indirectly on Claim 46 and Claims 63-77 that depend either directly or indirectly on Claim 62 all patentably define over Nakagawa taken alone or together with Sakanish for the reasons noted above as to these respective parent independent base claims. In addition, these dependent claims also patentably define over the applied references because of the features they add to those of the respective parent independent base claim.

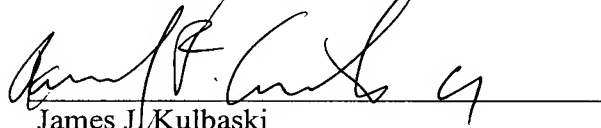
For example, Claims 27, 33, and 44 are rejected for the same reasons as for Claim 8 (see page 13 of the outstanding Office Action). However, the features recited in Claims 27, 33, and 44 are substantially different from those recited in Claim 8 and the features recited in Claims 6, 7, 9-13, and 15-19 are different from those recited by Claim 5 such that the rejection at page 13 of the outstanding Office Action that asserts the same rationale to reject Claims 6, 7, 9-13, and 15-19 as was used to reject Claim 5 is clearly improper.

Accordingly, withdrawal of the rejection of Claims 2-4, 6-19, 21-35, 37-40, 42-45, 47-61, and 63-77 as being unpatentable over Nakagawa in view of Sakanishi under 35 U.S.C. §103(a) is also respectfully requested for all the above-noted reasons.

As no further issues are outstanding in the present application, it is believed to be clearly in condition for formal allowance. Accordingly, an early and favorable action to that affect is therefore earnestly and respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'James J. Kulbaski', is written over a horizontal line.

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